IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

CRL.A.No. 93 of 1999()

CC.815/1996 of JUDL.MAGISTRATE OF FIRST CLASS-I, MUVATTUPUZHA

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APPELLANT:

LAZER MATHAI,
EDAPPULAKKATTIL HOUSE,
PIRAMADOM, PAMPAKUDA,
MUVATTUPUZHA.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENTS:

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1. E.M. MOOSA,
EDAKKATTIL HOUSE,
KIZHAKKEKARA, MUVATTUPUZHA.

2. STATE OF KERALA REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1-BY ADV. SRI.PEEYUS A.KOTTAM
R2-PUBLIC PROSECUTOR SRI.P. RAVEENDRA BABU

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO.93 OF 1999

Dated this the 25th day of May, 2007.

JUDGMENT

Appellant is the complainant in C.C.No.815/1996 on the file of the Judicial Magistrate of First Class-I, Muvattupuzha. He filed the above complaint alleging that the 1st respondent herein had borrowed an amount of Rs.1,75,000/= from the appellant and in discharge of the above said amount, the 1st respondent had issued a cheque on 31.5.1996 drawn in favour of the appellant. But, when the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of fund in the account of the 1st respondent. On getting intimation of the dishonour of the cheque, a lawyer notice was issued to the 1st respondent for return of the amount covered by the cheque. But, in spite of the receipt of the above notice as the amount was not repaid, the complaint was filed.

2. To prove the case against the 1st respondent, the appellant was examined as PW1 and relied on Exts.P1 to P7. After closing the evidence on the side of the appellant, the 1st respondent was questioned under Section 313 of the Code of Criminal Procedure.

Denying the transaction alleged between the appellant and the 1st respondent, the 1st respondent has stated that he had not borrowed any amount from the appellant. At the same time, the 1st respondent had a case that he had borrowed an amount of Rs.10,000/= from Edappalakkatu Financiers, a finance owned and conducted by brother of the appellant one George, and at the time of availing of the said loan, the 1st respondent had issued Ext.P1 cheque as a security to the financiers. Further, the 1st respondent had a case that he had paid the entire amount borrowed from the financiers but, the cheque was not returned and the same cheque was misused by the appellant. To prove that case, the 1st respondent was examined as DW1 and examined another witness as DW2. The 1st respondent also relied on Exts.D1 to D5. After the trial, the trial court acquitted the 1st respondent by the impugned judgment. The said judgment is assailed in this appeal.

3. The learned counsel appearing for the appellant submits that the finding of the trial court is not based on any evidence. The trial court ought to have seen the evidence adduced by the appellant to prove the transaction between and appellant and the 1t respondent. Further, the learned counsel submits that the findings entered by the

trial court with regard to the reliance placed on Exts.D1 and D2 are not legally acceptable.

4. Having heard the learned counsel on either side and on perusing the records of the case, this Court is of the view that the order of acquittal is passed mainly on two grounds. Firstly, the trial court found that the appellant failed to prove the alleged transaction between the appellant and the 1st respondent which led to passing of Ext.P1 cheque in favour of the appellant. To come to that conclusion, the trial court correctly found that the evidence adduced by the appellant would not show that there was any transaction between the appellant and the 1st respondent which led to payment of Rs.1,75,000/= by the appellant to the 1st respondent and execution of Ext.P1 is in pursuance to that transaction. The trial court also found that the appellant had admitted that there were some other witnesses, who had seen that the 1st respondent had issued the cheque in favour of him and one Mummy, an executive engineer of the PWD department. But there was no evidence to prove such a transaction as alleged by the appellant. The second ground for which the trial court acquitted the 1st respondent was that the case set up by the 1st respondent proving his Section 313

statement and the evidence adduced through DW1and DW2 would show that the case set up by the 1st respondent is more probable. Even if the appellant is succeeded in proving that the signature found in Ext.P1 is that of the 1st respondent, the presumption available to the appellant under Section 139 is a rebuttable one and as per the evidence adduced by the 1st respondent that presumption is already rebutted. Especially when the trial court relied on Exts.D1 and D2, by which it is made clear that the 1st respondent had taken some amount as loan from Edappalakkad financiers and at that time the 1st respondent had issued Ext.P1 cheque. This is also clear from Ext.D1, a letter sent by the appellant to the 1st respondent requesting him to pay off the debt and get back the documents which he kept in the office of the Edappalakkad Financiers and on that time the 1st respondent had issued Ext.P1 cheque.

In the above circumstances, this Court is of the view that the findings of the trial court are on evidence and the judgment impugned requires no interference. Accordingly, the appeal stands dismissed as merit less.

K. THANKAPPAN, JUDGE.

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K. THANKAPPAN, J.

CRL.A.NO.93 OF 1999-A

JUDGMENT

25th May, 2007.